

by the head of an executive agency or provided in this division or chapters 1 to 11 of title 40 to be made by the Administrator of General Services or other agency head may be made for an individual purchase or contract or, except for determinations or decisions made under sections 3105, 3301, 3303 to 3305, 3306(a)–(e), and 3308, chapter 37, and section 4702 of this title or to the extent expressly prohibited by another law, for a class of purchases or contracts.

(2) **DELEGATION.**—Except as provided in section 3304(a)(7) of this title, and except as provided in section 121(d)(1) and (2) of title 40 with respect to the Administrator of General Services, the agency head, in the discretion and subject to the direction of the agency head, may delegate powers provided by this division or chapters 1 to 11 of title 40, including the making of determinations and decisions described in paragraph (1), to other officers or officials of the agency.

(3) **FINALITY.**—The determinations and decisions are final.

(b) **WRITTEN FINDINGS.**—

(1) **BASIS FOR CERTAIN DETERMINATIONS.**—Each determination or decision under section 3901, 3905, 4503, or 4706(d)(2)(B) of this title shall be based on a written finding by the individual making the determination or decision. A finding under section 4503 or 4706(d)(2)(B) shall set out facts and circumstances that support the determination or decision.

(2) **FINALITY.**—Each finding referred to in paragraph (1) is final.

(3) **MAINTAINING COPIES OF FINDINGS.**—The head of an executive agency shall maintain for a period of not less than 6 years a copy of each finding referred to in paragraph (1) that is made by an individual in that executive agency. The period begins on the date of the determination or decision to which the finding relates.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3793.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
4701	41:257.	June 30, 1949, ch. 288, title III, § 307, 63 Stat. 396; Pub. L. 85–900, § 5, Aug. 28, 1958, 72 Stat. 967; Pub. L. 89–343, §§ 3, 4, Nov. 8, 1965, 79 Stat. 1303; Pub. L. 98–369, title VII, § 2714(a)(4), July 18, 1984, 98 Stat. 1184; Pub. L. 104–106, title XLIII, § 4321(e)(6), Feb. 10, 1996, 110 Stat. 675; Pub. L. 104–316, title I, § 121(c), Oct. 19, 1996, 110 Stat. 3836.
	41:262.	June 30, 1949, ch. 288, title III, § 312, as added Pub. L. 103–355, title I, § 1553, Oct. 13, 1994, 108 Stat. 3300.

§ 4702. Prohibition on release of contractor proposals

(a) **DEFINITION.**—In this section, the term “proposal” means a proposal, including a technical, management, or cost proposal, submitted by a contractor in response to the requirements of a solicitation for a competitive proposal.

(b) **PROHIBITION.**—A proposal in the possession or control of an executive agency may not be

made available to any person under section 552 of title 5.

(c) **NONAPPLICATION.**—Subsection (b) does not apply to a proposal that is set forth or incorporated by reference in a contract entered into between the agency and the contractor that submitted the proposal.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3794.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
4702(a)	41:253b(m)(3).	June 30, 1949, ch. 288, title III, § 303B(m), as added Pub. L. 104–201, title VIII, § 821(b), Sept. 23, 1996, 110 Stat. 2609.
4702(b)	41:253b(m)(1).	
4702(c)	41:253b(m)(2).	

In subsection (b), the words “Except as provided in paragraph (2)” are omitted as unnecessary.

§ 4703. Validation of proprietary data restrictions

(a) **CONTRACT THAT PROVIDES FOR DELIVERY OF TECHNICAL DATA.**—A contract for property or services entered into by an executive agency that provides for the delivery of technical data shall provide that—

(1) a contractor or subcontractor at any tier shall be prepared to furnish to the contracting officer a written justification for any restriction the contractor or subcontractor asserts on the right of the Federal Government to use the data; and

(2) the contracting officer may review the validity of a restriction the contractor or subcontractor asserts under the contract on the right of the Federal Government to use technical data furnished to the Federal Government under the contract if the contracting officer determines that reasonable grounds exist to question the current validity of the asserted restriction and that the continued adherence to the asserted restriction by the Federal Government would make it impracticable to procure the item competitively at a later time.

(b) **CHALLENGE OF RESTRICTION.**—If after a review the contracting officer determines that a challenge to the asserted restriction is warranted, the contracting officer shall provide written notice to the contractor or subcontractor asserting the restriction. The notice shall state—

(1) the grounds for challenging the asserted restriction; and

(2) the requirement for a response within 60 days justifying the current validity of the asserted restriction.

(c) **ADDITIONAL TIME FOR RESPONSES.**—If a contractor or subcontractor asserting a restriction subject to this section submits to the contracting officer a written request showing the need for additional time to comply with the requirement to justify the current validity of the asserted restriction, the contracting officer shall provide appropriate additional time to adequately permit the justification to be submitted.

(d) **MULTIPLE CHALLENGES.**—If a party asserting a restriction receives notices of challenges

to restrictions on technical data from more than one contracting officer, and notifies each contracting officer of the existence of more than one challenge, the contracting officer initiating the earliest challenge, after consultation with the party asserting the restriction and the other contracting officers, shall formulate a schedule of responses to each of the challenges that will afford the party asserting the restriction with an equitable opportunity to respond to each challenge.

(e) **DECISION ON VALIDITY OF ASSERTED RESTRICTION.**—

(1) **NO RESPONSE SUBMITTED.**—The contracting officer shall issue a decision pertaining to the validity of the asserted restriction if the contractor or subcontractor does not submit a response under subsection (b).

(2) **RESPONSE SUBMITTED.**—Within 60 days of receipt of a justification submitted in response to the notice provided pursuant to subsection (b), a contracting officer shall issue a decision or notify the party asserting the restriction of the time within which a decision will be issued.

(f) **CLAIM DEEMED CLAIM WITHIN CHAPTER 71.**—A claim pertaining to the validity of the asserted restriction that is submitted in writing to a contracting officer by a contractor or subcontractor at any tier is deemed to be a claim within the meaning of chapter 71 of this title.

(g) **FINAL DISPOSITION OF CHALLENGE.**—

(1) **CHALLENGE IS SUSTAINED.**—If the contracting officer's challenge to the restriction on the right of the Federal Government to use technical data is sustained on final disposition—

(A) the restriction is cancelled; and

(B) if the asserted restriction is found not to be substantially justified, the contractor or subcontractor, as appropriate, is liable to the Federal Government for payment of the cost to the Federal Government of reviewing the asserted restriction and the fees and other expenses (as defined in section 2412(d)(2)(A) of title 28) incurred by the Federal Government in challenging the asserted restriction, unless special circumstances would make the payment unjust.

(2) **CHALLENGE NOT SUSTAINED.**—If the contracting officer's challenge to the restriction on the right of the Federal Government to use technical data is not sustained on final disposition, the Federal Government—

(A) continues to be bound by the restriction; and

(B) is liable for payment to the party asserting the restriction for fees and other expenses (as defined in section 2412(d)(2)(A) of title 28) incurred by the party asserting the restriction in defending the asserted restriction if the challenge by the Federal Government is found not to be made in good faith.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3794.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
4703(a)	41:253d(a).	June 30, 1949, ch. 288, title III, § 303D, formerly § 303E, as added Pub. L. 98–577, title II, § 203(a), Oct. 30, 1984, 98 Stat. 3071; renumbered § 303D, Pub. L. 99–145, title XIII, § 1304(c)(4)(A), Nov. 8, 1985, 99 Stat. 742.
4703(b)	41:253d(b).	
4703(c)	41:253d(c) (1st sentence).	
4703(d)	41:253d(c) (last sentence).	
4703(e)	41:253d(d).	
4703(f)	41:253d(e).	
4703(g)	41:253d(f).	

§ 4704. Prohibition of contractors limiting subcontractor sales directly to Federal Government

(a) **CONTRACT RESTRICTIONS.**—Each contract for the purchase of property or services made by an executive agency shall provide that the contractor will not—

(1) enter into an agreement with a subcontractor under the contract that has the effect of unreasonably restricting sales by the subcontractor directly to the Federal Government of any item or process (including computer software) made or furnished by the subcontractor under the contract (or any follow-on production contract); or

(2) otherwise act to restrict unreasonably the ability of a subcontractor to make sales described in paragraph (1) to the Federal Government.

(b) **RIGHTS UNDER LAW PRESERVED.**—This section does not prohibit a contractor from asserting rights it otherwise has under law.

(c) **INAPPLICABILITY TO CERTAIN CONTRACTS.**—This section does not apply to a contract for an amount that is not greater than the simplified acquisition threshold.

(d) **INAPPLICABILITY WHEN GOVERNMENT TREATED SIMILARLY TO OTHER PURCHASERS.**—An agreement between the contractor in a contract for the acquisition of commercial items and a subcontractor under the contract that restricts sales by the subcontractor directly to persons other than the contractor may not be considered to unreasonably restrict sales by that subcontractor to the Federal Government in violation of the provision included in the contract pursuant to subsection (a) if the agreement does not result in the Federal Government being treated differently with regard to the restriction than any other prospective purchaser of the commercial items from that subcontractor.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3795.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
4704(a)	41:253g(a).	June 30, 1949, ch. 288, title III, § 303G(a), (b), formerly § 303H, as added Pub. L. 98–577, title II, § 206(a), Oct. 30, 1984, 98 Stat. 3073; renumbered § 303G, Pub. L. 99–145, title XIII, § 1304(c)(4)(A), Nov. 8, 1985, 99 Stat. 742.
4704(b)	41:253g(b).	